
(1999) 1 ACR 346

Allahabad High Court

Case No: Contemp (Appeal) No. 1464 of 1996

Bhagwan Swaroop and
D.I.O.S.

APPELLANT

Vs

Dharm Pal Singh and
Another

RESPONDENT

Date of Decision: Nov. 25, 1998

Acts Referred:

- Constitution of India, 1950 - Article 226
- Contempt of Courts Act, 1971 - Section 19
- Penal Code, 1860 (IPC) - Section 419, 420, 468, 471

Citation: (1999) 1 ACR 346

Hon'ble Judges: D.P. Mohapatra, C.J; R.R.K. Trivedi, J

Bench: Division Bench

Advocate: C.B. Gupta and J.N. Tewari, for the Appellant; D.G.A. and V.S. Diwedl, for the Respondent

Judgement

R.R.K. Trivedi, J.

This appeal u/s 19 of the Contempt of Courts Act, 1971 (hereinafter referred to as the Act) is from the order dated 23.8.1996, passed by the learned single Judge in Civil Misc. Contempt Petition No. 75 of 1996, by which Appellant has been found guilty of committing contempt of this Court and has been sentenced to undergo four months' Simple Imprisonment with a fine of Rs. 2,000 and in default of payment of fine to undergo further simple imprisonment for one month.

2. Facts, in short, giving rise to this contempt appeal are that opposite party No. 1 Dharm Pal Singh was appointed assistant teacher in C.T. grade in July, 1973 in Swargiya Harbansh Singh Inter College, Rewari, district Faithful (then only a Higher Secondary School). The appointment of opposite party No. 1 was approved by the District Inspector of Schools on 23.9.1974. He further claimed that he was promoted to L.T. grade on

29.12.1975 which was also approved by the District Inspector of Schools. However, on 14.6.1980 a first information report was lodged against him u/s 419/420/468/471, I.P.C. alleging that he filed a forged mark-sheet showing that he had passed B. Ed, examination from Magadh University, Bodh Gaya, Bihar. Opposite party No. 1 surrendered in Court. He remained in jail for 12 days and thereafter he was granted bail. Opposite party No. 1 was tried for the aforesaid offences in Criminal Case No, 1919 of 1992. However, he was ultimately acquitted by order dated 19.10.1993. After acquittal in the criminal case, opposite party No. 1 approached the Committee of Management and the District Inspector of Schools by making applications and requested that he should be allowed to resume his duties. When no orders were passed on the applications, opposite party No. 1 filed Writ Petition No. 3218 of 1994, Under Article 226 of the Constitution. This writ petition was disposed of finally on 6.1.1994 by the following order:

"Petitioner"s contention is that a criminal case was registered against the Petitioner in the year 1980 when the Petitioner was working as Assistant Teacher in C.T. grade in Swargiya Harbansh Singh Inter College, Rewari, district Fatehpur.

Petitioner was arrested in connection with the aforesaid criminal case and later on released on bail but the Petitioner was not permitted to work in the institution. Petitioner further claims that he has been now acquitted in the said case. Thereafter, the Petitioner has made representations to the Manager of the institution and also to the District Inspector of Schools, Fatehpur for permitting him to continue on his post. The contention of the Petitioner is that no body is passing any order on the Petitioner"s application.

In these circumstances, I think that it may be appropriate in the case that the District Inspector of Schools, Fatehpur, may look into the matter and pass suitable speaking order in accordance with law.

The writ petition is accordingly disposed of."

3. Opposite party No. 1 filed a second writ petition registered as Writ Petition No. 9902 of 1995. In this case, it was alleged that in spite of the order dated 6.1.1994, the District Inspector of Schools has not passed any order in spite of the reminders given. In Para 16 of the writ petition, it has been said that Respondent No. 1 by its letter dated 11.11.1994 directed the Petitioner to appear before him and the Petitioner was asked by the Respondent No. 1 to produce the copy of B. Ed, certificate otherwise the decision in the matter of the Petitioner shall not be possible. In Para 17 of the writ petition, it was further stated that in compliance with the order of the District Inspector of Schools, the Petitioner obtained certified copy of the mark-sheet of B. Ed, and migration certificate. On 22.2.1995 the Petitioner again wrote a letter to the District Inspector of Schools annexing certified copy of the certificate which was not received by the Respondent No. 1. Therefore, the Petitioner sent the same by registered post on 24.2.1995. This writ petition was disposed of finally on 17.4.1995 by the following order:

"In view of the fact that the earlier writ petition filed by the Petitioner was disposed of vide order dated 6.1.1995 with a direction to the District Inspector of Schools, Fatehpur to look into the matter and pass a suitable speaking order in accordance with law, I am of the view that the ends of justice would be met if the present writ petition is disposed of with a direction to the District Inspector of Schools to comply with the said order, if the same has not already been complied, within three months from the date of production of certified copy of this order.

The petition stands disposed of accordingly."

4. It appears that after the judgment in the aforesaid writ petition on 17.4.1995, opposite party No. 1 filed Civil Misc. Contempt Petition No. 756 of 1996, alleging that in spite of the knowledge of the orders" dated 6.1.1994 and 17.4.1995 passed by this Court, Appellant Bhagwan Swarup Singh, District Inspector of Schools, has not passed any order on his representation, hence he has committed willful disobedience of the directions of this Court and is liable to be punished. In the contempt petition, a notice was issued to the Appellant on 21.3.1996 and he was required to file his reply by 9.5.1996 and to show cause why proceedings for committing Contempt of Court may not be initiated against him. The Appellant put in appearance in contempt proceedings through Shri K.P. Shukla, advocate. Shri Shukla filed his Vakalatnama on 10.5.1996 but no counter-affidavit was filed. Thereafter, the proceedings were adjourned on few dates. Ultimately, 23.8.1996 was fixed for hearing en which date the impugned order was passed and the Appellant was punished as stated about for committing Contempt of Court, aggrieved by which this appeal has been filed.

5. During the pendency of this appeal, Civil Misc. Application No. 5451 of 1996 was filed on 9.9.1996 and the Appellant prayed that he may be permitted to implead Shri K.P. Shukla, advocate, of this Court as opposite party No. 2 in the appeal. The application was allowed by order dated 12.9.1996. Thus, Shri K.P. Shukla was impleaded as opposite party No. 2 in this appeal.

6. We have heard Shri J.N. Tiwari, learned Sr. counsel for the Appellant and Dr. R. Dwivedi, Sr. Advocate for opposite party No. 1 and Shri Dinesh Dwivedi has also been heard for opposite party No. 2. We have also perused the impugned order and the record of the case.

7. The impugned order dated 23.8.1996, by which the Appellant has been punished for committing Contempt of Court, has been passed in absence of his reply. Along with the affidavit filed in support of the stay application in appeal, counter-affidavit dated 9.5.1996 which was sworn in by Bhagwan Swarup Singh Appellant on 8.5.1996. at 9.30 a.m., has been filed as Annexure-2. Along with the above counter-affidavit, a copy of the order dated 3.12.1994 was also filed as Annexure-C.A. I and a photocopy of the postal receipt dated 5.12.1994 was filed as C.A. 2.

8. Shri J. N. Tiwari, learned Counsel for the Appellant, has submitted that in response to the notice served on the Appellant, he put in appearance through his counsel Shri K. P. Shukla and also got prepared his counter-affidavit annexing therewith the copy of the order dated 3.12.1994 which was passed in compliance with the order dated 6.1.1994 and a copy of which was sent to the opposite party No. 1 on 5.12.1994 under registered cover. Thus, the Appellant had not committed any willful disobedience of the order of this Court. However, it was unfortunate that the learned Counsel engaged by him did not file the counter-affidavit in contempt proceedings pending before the learned single Judge and in absence of the reply of the Appellant; he has been punished severely for committing contempt of this Hon"ble Court. Learned Counsel has submitted that the original affidavit which was prepared by Shri K. P. Shukla was returned to the Appellant which has been filed along with the stay application to establish bona fides of the Appellant that he did his best and everything required on his part and he did not deserve any punishment.

9. Dr. R. Dwivedi, learned Counsel for opposite party No. 1. on the Ors. hand, submitted that the order dated 3.12.1994 appears to have been passed by the Appellant subsequently as its copy was never served on opposite party No. 1. Existence of this order came to light only when this contempt appeal was filed in this Court. The existence of this order is highly doubtful.

10. Shri K.P. Shukla, advocate, opposite party No. 2 in this appeal, submitted that it is a fact that the Appellant engaged him as counsel for contesting the contempt proceedings. A counter-affidavit was prepared and the copy of the order dated 3.12.1994 and the postal receipts were also annexed thereto. Unfortunately, his clerk could not notice the case in the cause list and thus he remained under the impression that the case has not yet been listed and the counter-affidavit could not be filed in the Court. Shri K. P. Shukla expressed his regrets for this failure but he submitted that it was entirely due to the fact that inadvertently the case was not noticed by the clerk in the cause list.

11. We have thoroughly considered the submissions made by the parties. In our opinion, for deciding this appeal, it is necessary to determine whether the order dated 3.12.1994 was actually passed by the Appellant in pursuance of the order dated 6.1.1994 or it was passed subsequently only as a defense in the contempt proceedings. With this angle, we have examined the record. During the course of hearing, we were also informed that challenging the order dated 3.12.1994, opposite party No. 1 filed Writ Petition No. 41489 of 1996 which was decided on 20.12.1996 and the Regional Deputy Director of Education was directed to consider the case of opposite party No. 1 to pass an order after considering the entire matter, in pursuance of which the Regional Deputy Director of Education (Secondary) IVth Region, Allahabad, passed order on 30.5.1997 and accepted the claim of the Appellant with regard to L.T. grade teacher from the date of the order. Challenging the said order, now Civil Misc. Writ Petition No. 26014 of 1997 has been filed in this Court which is pending. The record of this pending writ petition and records of Writ Petition Nos. 3218 of 1994, 9902 of 1995 and 39709 of 1997 have also been examined

by us.

12. On behalf of opposite party No. 1, ignorance about the order dated 3.12.1994 has been expressed and its existence has been doubted. However, in our opinion, the doubt expressed does not appear to be correct. It appears that after the order dated 3.12.1994 was passed by the Appellant; an application was filed by opposite party No. 1 on 25.4.1995 which is Annexure-11 to the affidavit filed in support of the stay application. Along with this application, Dharm Pal Singh filed certified copies of the mark-sheet and also a certificate of B. Ed, along with affidavit dated 28.2.1995. On the basis of this application, Appellant passed the order dated 27.5.1995 asking the Principal of Government Inter College, Fatehpur, to depute some body to ascertain the genuineness of the documents filed, from the Magadh University, Bodh Gaya, Bihar and submit a report. In this order dated 27.5.1995, the Appellant has given reference of his order dated 3.12.1994. The Appellant thereafter passed order dated 16.9.1995, Annexure-13, addressed to the Principal, Government Inter College, Fatehpur, to the same effect. He also sent a letter to the Registrar, Magadh University, Bodh Gaya, Bihar, on 27.10.1995, Annexure-14, under which he authorized Shri S.P. Singh, Senior lecturer, to inquire into the genuineness of the documents filed by opposite party No. 1 and requested the Registrar to give him all cooperation. Again, orders were passed on 25.1.1996 and 20.4.1996 in this connection. In view of the order dated 27.5.1995, it is difficult to accept the contention raised on behalf of opposite party No. 1 that the order dated 3.12.1994 was not passed by the Appellant on the date shown in the order. We have also perused pages 11 and 12 of Writ Petition No. 26014 of 1997 but it does not appear from the averments made therein that the existence of the order dated 3.12.1994 passed by the Appellant was doubted in any way. Shri K.P. Shukla, advocate, opposite party No. 2, in this appeal has clearly stated before us that the copy of the order dated 3.12.1994 was handed over to him and on that basis; the affidavit was prepared by him which is Annexure-2 to the affidavit. The Appellant after receiving the report from Magadh University, Bodh Gaya, Bihar, passed Anr. Order on 17.9.1996 by which he confirmed his earlier order dated 3.12.1994. Orders dated 3.12.1994 and 17.9.1996 both were challenged by opposite party No. 1 in Writ Petition No. 41489 of 1996, decided on 20.12.1996.

13. In the facts and circumstances narrated above, in our opinion, the order dated 3.12.1994 was already passed by the Appellant in compliance of the order dated 6.1.1994 of this Court and the impugned order dated 23.8.1996 was passed as the true and complete facts could not come before the learned single Judge. Had the facts narrated above come before the learned single Judge, the impugned order could not have been passed. In the circumstances, this appeal deserves to be allowed.

14. Before parting with the case, it also appears necessary to assess the conduct of Shri K.P. Shukla, advocate, on account of which the impugned order was passed against the Appellant. Shri K.P. Shukla submitted that the case was not noticed by his clerk, hence he " could not appear before the learned single Judge and could not file counter-affidavit

in the case. Shri Shukla expressed regrets for his failure. We have no material on record to doubt the fair statement of Shri K.P. Shukla. Such lapse on account of the failure on the part of the office of advocates is not unknown. Therefore, the explanation submitted by Shri K.P. Shukla is accepted.

15. For the reasons stated above, this appeal is allowed. The impugned order dated 23.8.1996, passed in Civil Misc. Contempt Petition No. 756 of 1996 is set aside. There shall, however, be no order as to costs.